IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 2600 of 1996(C)

AA.134/1991 of APPELLATE AUTHORITY, KANNUR
SM.1205/1977 of LAND TRIBUNAL, KASARGOD
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REVN. PETITIONER: RESPONDENT:

BETHUR NARAYANI @ AMMALU AMMA,
W/O.CHEVERI KANNAN NAIR,
R/AT ANANDAMAATAM,
(MALANKADAPPU) BADADKA VILLAGE,
KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS: STATE & APPELLANT:
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1. KAMALON KUNHAMBU NAIR,
S/O.CHATHU NAIR,
R/AT OYOLAM HOUSE, BADADKA VILLAGE,
KASARAGOD DISTRICT (D I E D).

2. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, THIRUVANANANTHAPURAM.

***SUPPLEMENTAL R3 TO R10 ARE IMPLEADED:**

R3. B.NARAYANI AMMA, W/O.LATE K.KUNHAMBU NAIR,
KAVINTODI HOUSE, VATTAMTHATTA P.O., KASARAGOD.

R4. B.REGUNATHAN, S/O.LATE K.KUNHAMBU NAIR, ...DO...DO...

.2/-

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R5. B.KAMALAKSHAN, S/O.LATE K.KUNHAMBU NAIR,
KAVINTODI HOUSE, VATTAMTHATTA P.O., KASARAGOD.

R6. B.SAVITHRI AMMA, W/O.DAMODARAN NAIR,
PLAVILAYA HOUSE, KUTTIKKOLE P.O., KASARAGOD.

R7. B.KARTHIYANI AMMA, W/O.V.NARAYANAN NAIR,
KALLATHU HOUSE, VATTAMTHATTA P.O., KASARAGOD.

R8. B.RAMANI, W/O.DAMODARAN NAIR,
MALANKADAPPU HOUSE, VATTAMTHATTA P.O., KASARAGOD.

R9. B.SUMATHI, W/O.GANGADHARAN NAIR,
BETTURPARA HOUSE, VATTAMTHATTA P.O., KASARAGOD.

R10. B.PRASANNAKUMARI, W/O.CHANDRAN NAIR,
BEPPU HOUSE, IRIYANNI P.O., KASARAGOD.

*SUPPLEMENTAL R3 TO R10 ARE IMPLEADED AS THE LEGAL HEIRS OF DECEASED R1 AS PER ORDER DTD. 16/11/06 IN I.A.NO.2283/06.

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA for R2
BY ADV. SRI.K.G.GOURI SANKAR RAI for R1

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.2127/1997 IN C.R.P.NO.2600/1996 C

DISMISSED

18/07/2007 **SD/-PIUS C.KURIAKOSE, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

C.R.P. No. 2600 OF 1996

Dated this the 18th day of July, 2007

O R D E R

The B party respondent in SM proceedings No. 1205/77 on the file of Land Tribunal, Kasaragode is aggrieved by the order of the Land Reforms Appellate Authority passed in AA No.134/91 filed by the first respondent A party setting aside the order of the Land Tribunal dismissing the case and directing issuance of purchase certificate to the 1st respondent appellant. The SM proceedings were initiated by the 1st respondent for purchase of 3.50 acres of land in RSNo.21/7 of Kuttikola Village. According to the 1st respondent, he obtained the property 14 years prior to the filing of the petition and has been in possession and enjoyment ever since. He claimed that he has been paying basic tax since 1973 and had effected improvements. He claimed that Rs.15/- per year is being paid to the petitioner as rent for which no receipts were issued. The petitioner as B party contended that the 1st respondent does not have possession or enjoyment of the SM property. It was contended that the 1st respondent is not a cultivating tenant at all and that there was no privity of contract between the 1st respondent and him. According to the petitioner, she is in direct possession of the disputed property ever since allotment under an award, partition deed

No.1565/1956. It was pointed out that she had no exclusive right in 1952, the date of alleged lease and at that time the property belonged to the Tharavadu. The evidence before the Land Tribunal consisted of Exts.A1 to A9 tax receipts produced by the 1st respondent A party on the petitioners by B1 to B7 were produced. Exts.C1 to C6 were the reports submitted by the Special Revenue Officer. On the side of the 1st respondent three witnesses 1 to 3, were examined while on the side of the petitioner RW1 and 2, were examined. The Tribunal found on the basis of PW1's evidence that the 1st respondent is mentally sick and therefore could not have initiated proceedings. It was also found that Exts.A1 to A9 are in respect of other properties and that claim of tenancy is false. The Appellate Authority permitted the 1st respondent to produce documents after the arguments were over and proceeded to allow the appeal relying on those documents. The petitioner contends that the reception of these documents by the Appellate Authority was improper. No opportunity had been given to the petitioner for contradicting those documents.

2. I have heard the submissions of Sri.Kodoth Sreedharan, learned counsel for the petitioner who addressed me very strenuously on the various grounds raised in the Writ Petition. It appears to me that

the grievance of the petitioner that she was deprived of an opportunity to challenge Exts.A1 to A18 which was produced before the Appellate Authority only has some genuineness. It is also seen that the Appellate Authority has not entered clear findings regarding the findings of the Land Tribunal that the documents produced before the Tribunal does not pertain to the SM property. It is possible that those documents pertain to the property covered by the Marupat. A reading of the Appellate Authority's order will show that the said Authority was very much displeased by the conduct of the petitioner in not getting herself examined or in getting any immediate members of the family examined as witnesses. But then it should have been noticed that concededly the appellant before the Appellant Authority was a mentally ill person and therefore the appeal itself was incompetent.

3. I set aside the order of the Appellate Authority and remand the matter back to the Land Tribunal. The Land Tribunal will conduct a fresh enquiry in which PW1 will be recalled so that the opportunity will be afforded to the petitioner for cross examining PW1 with reference to the fresh documents which were produced before the Appellate Authority. The Tribunal will give an opportunity to both sides to produce whatever further documents necessary for them for substantiating their

rival claims. Fresh decision as directed above will be taken by the Tribunal at the earliest and at any rate within four months of receiving copy of this order.

The Civil Revision Petition is allowed by way of remand.

PIUS C. KURIAKOSE, JUDGE

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